



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 321 OF 2015

REUBEN MUSYOKI MULI.....1ST APPELLANT

JAMES NTHENGE.....2ND APPELLANT

VERSUS

JAMES GICHUKI GICHUHI.....1ST RESPONDENT

LAWRENCE GICHUKI GICHUHI.....2ND RESPONDENT

PETR ITUGI KAMAU.....3RD RESPONDENT

RULING

- 1) The respondents took out the motion dated 12th January 2021 whereof they applied for the record of appeal dated 1.8.2017 to be struck out and for the appeal to be dismissed with costs.
- 2) The respondents' learned advocate filed an affidavit he swore in support of the motion. The appellants filed the replying affidavit sworn by Mr. Abincha, learned advocate for the appellant to oppose the motion.
- 3) I have considered the grounds stated on the face of the motion dated 12th January 2021 and the facts deponed in the rival affidavits. It is the submission of the respondent that the appellant has lost interest to pursue this appeal hence the appeal should be dismissed for want of prosecution.
- 4) It is stated that the memorandum of appeal was filed on 3rd July 2015 while the record of appeal was filed on 2nd August 2017. It is pointed out that the appellants have not taken any step since 2nd August 2017 to have the appeal ready for hearing.
- 5) The appellant opposed the application arguing that they are yet to be supplied with typed proceedings and judgment by the trial court. The appellants aver that they made several attempts to obtain the typed proceedings and judgment. They annexed a bundle of letters written requesting for such documents.
- 6) Having considered the averments made in the rival affidavits, it is clear that the respondents have not controverted the averments made by Mr. Abincha that the appellants have written several letters requesting to be supplied with proceedings to enable them prepare the record of appeal.
- 7) I am satisfied that the appellants did not sit on their laurels but have taken necessary steps to have the appeal ready for hearing. The appellants appear to have been frustrated by the failure by the court to supply them with typed proceedings. I am persuaded that the appellants have given sufficient explanation for this court not to dismiss the appeal.

8) In the end, I decline to dismiss the appeal for want of prosecution and instead dismiss the motion dated 12.1.2021 with costs abiding the outcome of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF OCTOBER, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Respondent

..... for the Appellant